

REMARKS

After careful consideration of the outstanding Office Action, this application has been amended accordingly, and favorable reconsideration on the merits thereof is at this time respectfully requested.

At page 2 of the Office Action, the Examiner rejected claims 1 through 14 “under 35 U.S.C. 102(b) as being anticipated by Swisher, Jr. (US 5354147).”

A rejection of the claim based upon 35 U.S.C. § 102 is only proper “if that reference discloses each and every element of the claim.” (See Stoller v. Ford Motor Co., 18 USPQ 2d 1545, 1546.) The Swisher, Jr. patent fails to disclose “each and every element” of independent claim 1 prior to the present amendment, and the amendments to claim 1 clearly avoid the Section 102(b) rejection based on Swisher, Jr., as well as obviousness under 35 U.S.C. § 103.

At page 2 of the Office Action, toward the bottom of the description of the Swisher, Jr. patent, the Examiner states: “the combustion engine is arranged in a fixed manner at the machine chassis (12) **between** the pivoting arms.” The combustion engine 24 is admittedly “fixed” to the machine chassis, but not “**between** the pivoting arms” 19, 19 thereof. Figures 1 and 2 of the drawings clearly illustrate the location of the combustion engine 24 adjacent the front end 20 of the frame 12 in Figure 4, the foreground pivoting arm or chain case 19 is not visible because the vertical cross-section taken through the cutter housing 18. However, it is clear in Figure 4 that the combustion engine 24 is not illustrated therein and thus is not arranged “**between** the pivoting arms” (19, 19).

The Examiner is further in error in stating that the mechanical power transmission device together with the working drum (56) mounted in the pivoting arms “can be pivoted about the axis of the output shaft (34 [sic 64]) of the combustion engine (32).” The output shaft 64 runs essentially **longitudinally** of the frame and really is not even a drive shaft of the engine. It is instead a “power **take-off** drive shaft 64” which is drivingly connected in an undisclosed fashion to the engine 24 and does rotate the drive shaft of the cutter transmission 58 in the manner described at column 3, between lines 16 through 30. There is absolutely nothing stated in the description of the power drive assembly appearing at column 3, between lines 16 through 30 which evidences **anything** pivoting **about the axis of the output shaft 64** from the combustion engine 24.

Based upon the foregoing, the rejection of independent claim 1, again prior to this amendment, under 35 U.S.C. § 102(b) is improper and ought be withdrawn. The withdrawal of such a rejection and the formal allowance of amended claim 1 and all of the claims depending directly or indirectly therefrom is herewith respectfully requested.

Amended claim 1 is somewhat more specific than original claim 1 to forestall misinterpretation thereof and to avoid any issues of obviousness under 35 U.S.C. § 103. In addition to the latter two limitations in the characterization portion of original claim 1, amended claim 1 recites “the at least one output shaft (34) being arranged transversely to the direction of travel.” The last limitation of amended claim 1 also has been amended to call for the pivoting of the power transmission

device (36) along with the milling drum (20) by the pivoting of the pivoting arms (42) “for **rotation about the axis** of the **output shaft (34)** of the combustion engine (32).”

As noted earlier, the output shaft 64 so defined by the Examiner is not “arranged transversely to the direction of travel,” and the pivot arms 19, 19 or 19, 54 are not “pivoted for rotation about the axis of the output shaft (34) of the combustion engine (32).” Quite simply, the totality of the limitations recited in the characterization clause of independent amended claim 1 clearly avoid the Swisher, Jr. patent under 35 U.S.C. § 103 when properly tested under the “three conditions” expressed in Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Inasmuch as independent amended claim 1 clearly avoids the Swisher, Jr. patent, the formal allowance of claim 1, as well as each of the claims depending directly or indirectly therefrom is considered proper and would be most appreciated.

Some observations are believed necessary with respect to the Examiner’s rejection of several of the dependent claims, such as claim 2 which states “ that the output shaft (34) of the combustion engine (32) is **parallel to or coaxial with** a crankshaft axle (40) of the combustion engine (32).” There is neither the parallel nor the coaxial relationship recited in claim 2 found in the Swisher, Jr. machine. The Examiner’s silence with respect to dependent claim 2 is believed supportive of the absence of the subject matter of claim 2. Hence, the allowance of claim 2 is clearly believed to be in order and would be most appreciated.

Nowhere does the Examiner mention the limitations appearing in claim 3 of “a clutch or a clutch coupled to a pump transfer gear box in a physical unit is arranged between the output shaft (34) and the power transmission device (36).”

Similarly, claim 4 states “ an operator’s platform (10) is arranged in **front** of the combustion engine (32) in the direction of travel” which is not the case in the Swisher, Jr. patent because, of course, the combustion engine 24 is located at the front end 20 of the pulverizing machine 10.

Dependent claim 5 calls for the operator’s platform as being “arranged in a transversely movable manner in front of axles of the front wheels (8).” No mention is made by the Examiner with respect to the latter-quoted limitation and the clear absence of comparable structure in the Swisher patent.

The latter group of dependent claims and more specifically limited dependent claims 15 through 27 are clearly urged to define Applicant’s invention beyond anything that may be rendered obvious or anticipated by the Swisher, Jr. patent. Accordingly, upon reconsideration of the application and the new claims submitted herewith, the formal allowance of all of the claims of record at an early date is respectfully requested.

Respectfully submitted,

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